



## **DEPARTMENT OF AGRICULTURE**

### **Natural Resources Conservation Service**

**[Docket No. NRCS-2022-0014]**

#### **Determination of the Primary Purpose of the New York Suffolk County Septic Improvement Program (SIP)**

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice.

**SUMMARY:** USDA is providing public notice that the Secretary of Agriculture has determined that cost share payments made by the New York Suffolk County SIP are primarily for the purpose of conserving soil and water resources or protecting and restoring the environment. The Natural Resources Conservation Service (NRCS) was assigned technical and administrative responsibility for reviewing the New York Suffolk County SIP and for making appropriate recommendations for the Secretary's determination of primary purpose. The Secretary's determination permits recipients of cost share payments to exclude such payments from gross income to the extent allowed by the Internal Revenue Service.

**FOR FURTHER INFORMATION CONTACT:** Ronnie Maurer; telephone (202) 720-9733; or email: [Ronnie.Maurer@usda.gov](mailto:Ronnie.Maurer@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under Section 126(a)(8) of the Internal Revenue Code of 1954, as amended (26

U.S.C. 126) gross income does not include the “excludable portion” of payments received under any program of a State, or a political subdivision of a State, under which payments are made to individuals primarily for the purpose of protecting or restoring the environment. In general, a cost share payment for selected conservation practices is exempt from Federal taxation if it meets three tests:

- (1) It was for a capital expense;
- (2) It does not substantially increase the operator’s annual income from the property for which it is made; and
- (3) The Secretary of Agriculture certified that the payment was made primarily for conserving soil and water resources, protecting, or restoring the environment, improving forests, or providing habitat for wildlife.

The Secretary of Agriculture evaluates a conservation program on the basis of criteria specified in 7 CFR part 14 and makes a “primary purpose” determination for the payments made under the conservation program. The objective of the determination made under part 14 is to provide maximum conservation, environmental, forestry improvement, and wildlife benefits to the general public from the operation of applicable programs. Final determinations are made on the basis of program, category of practices, or individual practices.

NRCS was assigned technical and administrative responsibility for reviewing the New York Suffolk County SIP and for making appropriate recommendations for the Secretary’s determination of primary purpose.

Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury determines if the payments made under the conservation program substantially increases the annual income derived from the property benefited by the payments.

## **Environmental Review**

From this Federal action, approving tax deferral will not result in impacts to the environment, therefore, no further National Environmental Policy Act (NEPA) documentation will be prepared.

### **Determination**

As provided for by Section 126 of the Internal Revenue Code, the Secretary examined the authorizing legislation, regulations, and operating procedures regarding the New York Suffolk County SIP. In accordance with the criteria specified in 7 CFR part 14, the Secretary has determined the primary purpose of cost share payments made under the New York Suffolk County SIP is conserving soil and water resources or protecting and restoring the environment.

A current residential property owner residing in any area of Suffolk County may apply for a SIP grant to design, purchase, or install an Innovative and Alternative Onsite Wastewater Treatment System (I/A OWTS). The I/A OWTS must be approved for use by the Suffolk County Department of Health. All residential property owners are eligible because nitrogen loading does not affect just the property on which it occurs, but instead affects the entire regional area. However, since there are properties in areas that are even more susceptible to damage, the Suffolk County Commissioner of Health Services may authorize preferential review of an application for a grant if the grant application is for a residence in an area specified by Health Services as environmentally sensitive.

Rules were developed that allow for a priority order on the issuance of grants, based on the environmental sensitivity of the area (for example, groundwater travel time to surface water in the home's geographic area). Suffolk County executes a grant contract with the property owner, which is recorded, but Suffolk County directly pays the designer, installer, or manufacturer of the I/A OWTS from a list established by the County. The amount of the grant award is based on actual eligible costs, up to \$20,000,

with the property owner incurring any additional expenses for the design, purchase, and installation costs over the grant amount.

A “Record of Decision” for the New York Suffolk County SIP to provide grants to homeowners to design, purchase, or install an I/A OWTS has been prepared and is available upon request from the Acting Director, Financial Assistance Programs Division, NRCS, 1400 Independence Avenue, SW, Room 4529 South Building, Washington, DC 20250.

The Secretary’s determination is in accordance with section 126 of the Internal Revenue Code, and permits recipients of cost share payments to exclude those payments from gross income to the extent allowed by the Internal Revenue Service.

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Terry Cosby,

Chief,

Natural Resources Conservation Service.

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